UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAYMOND B. SIMMONS,

Plaintiff,

v.

AMERICAN AIRLINES,

Defendant.

_____/

No. C-00-0620 JCS

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant's Motion For Summary Judgment came on for hearing on December 15, 2000, at 9:30 a.m. For the reasons stated below, Defendant's Motion is GRANTED.

I. INTRODUCTION

Plaintiff, who is African-American, alleges that Defendant, American Airlines, discriminated against him on the basis of race in violation of the Unruh Civil Rights Act. Cal. Civ. Code § 51. According to Plaintiff, he was removed from a flight prior to take-off on the basis of an unsubstantiated complaint by another passenger that he was acting in a disorderly manner. Plaintiff further alleges that after he was removed from the plane, he was told by the flight attendants who had removed him that the passenger had reported that Plaintiff yelled "honky bitches" on the plane. Plaintiff denies that he made such a statement and further denies that his conduct on the plane was improper. He asserts that he was removed from the plane because of his race. Defendant seeks an order granting summary judgment on the basis that Plaintiff was removed for disorderly conduct pursuant to a legitimate business policy under which the airline may remove from the plane passengers who engage in misconduct.

II. BACKGROUND[1]

On August 19, 1999, Plaintiff was removed prior to take-off from an American Airlines flight bound for Tampa, Florida. According to Plaintiff, he was sitting reading a book when two flight attendants asked Plaintiff to retrieve his carry-on bag and get off the plane. See August 29, 1999 letter attached to Complaint ("August 29 letter"). The flight attendants did not inform Plaintiff of the reason he was being asked to get off the plane at that time. *Id*. As he stepped off the plane, he asked the flight attendants, "Do you believe that I am a hijacker?" *Id*. When one of the flight attendants questioned him about this statement, Plaintiff said that the comment was "just an unfunny joke." *Id.* After Plaintiff was in the airport, the two flight attendants who had escorted Plaintiff from the plane told Plaintiff that he had been asked to get off the plane because another passenger had accused him of yelling "honky bitches" on the plane. *Id*. Plaintiff denied that he had made such a statement. *Id*. Plaintiff does not dispute that he was permitted to board a flight to Tampa later that day.

Subsequent to the incident described above, American Airlines personnel completed an incident report describing the events leading up to Plaintiff's removal from the flight. See Exh. 3 to Declaration of George Warner in Support of Defendant's Motion For Summary Judgment ("Warner Decl."). The report states that:

> PAX WAS DEPLANED DUE TO ANOTHER PAX WHO COMPLAINED AND WAS QUITE SHAKEN UP BECUASE [sic] PAX SIMMONS WAS USING OBSCENE LANGUAGE ON BOARD. CAPTAIN REQUESTED PAX BE REMOVED FROM A/C. PAX WAS ALSO TALKING ABOUT A HIJACK. HAVD MR SIMMONS BECUASE [sic] OF HIS LANGUAGE AND STATEMENTS THE CAPTAIN HAS MADE A DECISION IN ORDER TO GUARANTEE [sic] THE SAFETY OF THE OTHER PAX.

Id. The report also includes the following "Event Note Details:"

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[1] In summarizing the facts, the Court has relied upon undisputed facts whenever possible. Where the facts are in dispute, the Court has drawn all inferences in favor of Plaintiff. *See Yartzoff v. Thomas*, 809 F.2d 1371, 1373 (9th Cir. 1987) (holding that on summary judgment court must view the evidence and the inferences from that evidence in the light most favorable to the nonmoving party).

A FEMALE PSGR TOLD F/A # 5 THAT THE MALE PASSENGER IN 29F WAS FACING WINDOW AND MUMBLING OBSCENITIES, INCLUDING "D___ WHITE B___." MALE PASSENGER LATER SAID, "I AM NOT GOING TO HIJACK." GATE AGENT AND F/A BOWMAN ALLEGEDLY HEARD THIS COMMENT, AND PASSENGER WAS REMOVED FROM ACFT.

Id.

III. ANALYSIS

A. Legal Standard

Rule 56 provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A party moving for summary judgment must show the absence of a genuine issue of material fact to prevail. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this showing, the burden then shifts to the party opposing summary judgment to designate "specific facts showing there is a genuine issue for trial." *Id.* A "material" fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit. *T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). On summary judgment, all reasonable inferences must be drawn in favor of the non-moving party. *Id.*

Summary judgment motions in Unruh Act cases are governed by the burden shifting provisions established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) and *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981). *See Green v. Santa Margarita Mortgage Co.*, 28 Cal. App. 4th 686, 710-711 (1994). In *McDonnell-Douglas*, the Supreme Court adopted a three-part analysis for discrimination claims: "(1) [t]he complainant must establish a prima facie case of discrimination; (2) the [defendant] must offer a legitimate reason for his actions; (3) the complainant must prove that this reason was a pretext to mask an illegal motive." 411 U.S. at 802.

On summary judgment, the requisite degree of proof to establish a prima facie case of discrimination is minimal and does not even need to rise to the level of preponderance of the evidence. *See Yartzoff v. Thomas*, 809 F.2d 1371, 1375 (9th Cir. 1987). A plaintiff need only offer evidence which "gives rise to an inference of unlawful discrimination." *Lowe v. City of Monrovia*, 775 F.2d 998, 1005 (9th Cir. 1983); *see also Sischo-Nownejad v. Merced Community College Dist.*, 934 F. 2d 1104, 1111 (9th Cir. 1991) (holding that "[t]he amount of evidence that must be produced in order to create a prima facie case is very little").

If the plaintiff establishes a prima facie case, the burden shifts to the defendant to rebut the presumption of discrimination by producing evidence that the defendant's acts were taken for a legitimate, non-discriminatory reason. *Burdine*, 450 U.S. at 254. However, it is only the burden of production that shifts. *Id*. The burden of persuasion never shifts from the plaintiff. *Id*. Therefore, the defendant need not persuade the court that it was actually motivated by the proffered reason. *Id*. Rather, "it is sufficient if the defendant's evidence raises a genuine issue of fact as to whether it discriminated against plaintiff." *Id*. at 254-255.

Once the defendant has articulated a legitimate, non-discriminatory reason for its actions, and presented sufficient evidence to create a genuine issue of fact, a plaintiff can survive summary judgment only if he offers "specific and significantly probative evidence that the [defendant's] alleged purpose is a pretext for discrimination." *Schuler v. Chronicle Broadcasting Company*, 793 F.2d 1010, 1011 (9th Cir. 1986). "A plaintiff 'may succeed in persuading the court that she has been the victim of intentional discrimination . . . either by directly persuading the court that a discriminatory reason more likely motivated the [defendant] or indirectly by showing that the [defendant's] proffered reason is unworthy of credence.'" *Lowe*, 775 F.2d at 1008 (quoting *Burdine*, 450 U.S. at 256).

B. Unruh Civil Rights Act

The Unruh Civil Rights Act provides as follows:

> All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or disability are entitled to the full and

> equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatever.

Cal. Civ. Code § 51. This provision protects airline passengers from discrimination on the basis of membership in any of the classes enumerated in the statute, including race. *Antione Abou-Jaoude v. British Airways*, 228 Cal. App. 3d 1137, 1145 (1991). Although the Unruh Act prohibits "arbitrary discrimination" on the basis of race, it does not prohibit business from enacting "reasonable regulations that are rationally related to the services performed and facilities provided . . . as long as the policy is applied alike to all persons." *Lazar v. Hertz Corp.*, 69 Cal. App. 4th 1494, 1502 (Cal. Ct. App. 1999) (citing *Harris v. Capital Growth Investors XIV*, 52 Cal. 3d 1142, 1155 (1991)). For instance, in *Harris*, the California Supreme Court held that minimum income requirements imposed on all prospective tenants did not violate the Unruh Act, even though it may have disproportionately affected women.

Here, Defendant asserts that summary judgment in its favor is warranted because its actions were based upon a reasonable regulation that is rationally related to the services that it performs and because Plaintiff has presented no specific facts showing that the reason offered by Defendant was a pretext. Specifically, Defendant has presented an incident report showing that the captain made the decision to remove Plaintiff from the plane pursuant to American Airlines' safety policy, which allows the airline to remove passengers for misconduct.[2] Exh. 3 to Warner Decl. According to the American Airlines Safety Manual, "[p]assenger misconduct requiring the Captain's attention prior to departure may result in removal of the passenger from the aircraft." Exh. 2 to Warner Decl. The Manual continues, "[t]he Captain should assess whether misconduct on the ground may escalate in flight." *Id*. The Manual also includes a detailed discussion of "what we mean by misconduct," noting that "crew members are not obligated to accept passenger behavior that escalates beyond a critical threshold." *Id.*

[2] Defendant conceded at oral argument that Plaintiff's reference to a "hijacking" was not the motivating factor in Defendant's decision to remove Plaintiff from the plane, as this comment was made after Plaintiff had been removed. Rather, the only misconduct at issue is the alleged use of obscenities by Plaintiff of which another passenger complained, prior to Plaintiff's removal from the plane.

Because Defendant has articulated a legitimate, non-discriminatory reason for its actions and presented evidence sufficient to create a genuine issue of material fact in support of this reason, Plaintiff has the burden on summary judgment to present "specific and significantly probative evidence" that Defendant's articulated reason was a pretext for discrimination.[3] *Schuler v. Chronicle Broadcasting Company*, 793 F.2d at1011. Here, the sole facts in the record are that a passenger told a flight attendant that Plaintiff was using obscenities, including the words "dumb white bitch" and that, based on the passenger's report, Defendant had Plaintiff removed from the plane.

Plaintiff has presented no evidence showing that the reason offered by Defendant for its actions – that it was acting pursuant to its safety policy – was a pretext for discrimination. The fact that Plaintiff is an African-American male, and that he was removed because another passenger complained about his making obscene comments that referred to white women is not sufficient to create a genuine issue of material fact on the question of whether Defendant's articulated reason for removing Plaintiff from the plane was a pretext. The fact that *Plaintiff's* alleged comments were of a racial nature is not sufficient to raise an inference that the intent of the *airline* was based on Plaintiff's race. Because Plaintiff has failed to present "specific and probative evidence" of pretext, no reasonable jury could conclude that Plaintiff's removal from the plane was motivated by race.

IV. CONCLUSION

Defendant's motion for summary judgment is GRANTED. The Clerk is directed to close the file in this case.

IT IS SO ORDERED.

Dated: December 20, 2000

Joseph C. Spero
United States Magistrate Judge

[3] The Court assumes without deciding that Plaintiff has presented sufficient evidence to make a prima facie case of racial discrimination.